

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF BANKING AND SECURITIES

November 14, 2012

To All Pennsylvania State-Chartered Banks, Bank and Trust Companies, Savings Banks, Trust Companies and Savings Associations:

I am pleased to announce that on October 24, 2012, Governor Corbett signed into law House Bills 2368-2370, known as the "Banking Law Modernization Package," as Acts 170-172 of 2012 (the "Acts"). The enactment of these bills, all of which will be effective on December 24, 2012, represents a major achievement for the banking industry in Pennsylvania, and is the culmination of more than a year's worth of effort by the Commonwealth of Pennsylvania Department of Banking and Securities (the "Department") and the Pennsylvania Bankers Association to enact positive legislative changes that will ensure the safety and soundness of a healthy banking industry in Pennsylvania.

The overall goal of the Banking Law Modernization Package was to update, simplify and modernize the banking laws of the Commonwealth and to reduce regulatory burden at the state level where possible, given the increased regulatory demands of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). These goals are in line with the Corbett Administration's priority of confirming that Pennsylvania is "open for business" by reducing regulatory burden where possible and appropriate. I am pleased to say that the Acts will help accomplish these goals, and this letter is intended to provide you with highlights regarding the Acts.

Please note that this letter contains generalizations regarding the Acts and is therefore not inclusive of all of their provisions, conditions, exceptions, and details. It is vitally important for you to familiarize yourself with the Acts themselves and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

Act 170 of 2012 - Amendments to the Banking Code of 1965

The primary focus of the Banking Law Modernization Package was to update, simplify and modernize the Banking Code of 1965 (the "Banking Code"). The Banking Code has been amended several times in the past, but the amendments contained in Act 170 of 2012 represent the most comprehensive changes to the Banking Code since the early 1980s. A summary of all

The fourth bill in the package, House Bill 2536 (repeal of the Savings Association Code of 1967), was delayed in the General Assembly and failed to achieve final passage in the Senate before the end of the legislative session. The Department expects that this bill will be reintroduced in the next General Assembly and enacted quickly in 2013.

of the changes to the Banking Code, with notes regarding the changes in some instances, is attached for your review. Highlights of these changes include:

- Amendments to Section 202(e) of the Banking Code increase threshold for seeking prior approval from the Department for investments in bank premises/fixed assets from 25% to 100% of capital, surplus, undivided profits and capital securities, which puts Pennsylvania state-chartered banks on more level footing with national banks.
- Amended Sections 303 and 506 and deleted Sections 309, 310, 316-322, 505 and 506 of the Banking Code eliminate archaic lending requirements and pricing restrictions in order to simplify the lending provisions of the Banking Code. By virtue of amended Sections 303 and 506 of the Banking Code, interest rate and fee restrictions regarding lending activity by Pennsylvania state-chartered banks and savings banks have been removed, thus statutorily putting in place what has largely been the existing state of law regarding the lending authority for Pennsylvania state-chartered banks and savings banks.
- The insertion of the mandatory Dodd-Frank lending limit language in Section 306 and new Section 516 of the Banking Code will allow Pennsylvania state-chartered banks and savings banks to continue to engage in derivative transactions. Section 611 of Dodd-Frank requires a state to consider credit exposure to derivatives transactions in lending limit laws if the state wishes to allow banks to engage in derivatives transactions. Pennsylvania has now met this federal requirement, well before the January 13, 2013, deadline imposed by Dodd-Frank.
- The restriction to a maximum of two beneficiaries on deposit accounts has been eliminated from Section 605 of the Banking Code, which is an antiquated provision of the Banking Code that has generated complaints from your customers over the years.
- Amended Section 905(e) of the Banking Code allows branch closings to be accomplished by notice to the Department, rather than by application for approval.
- The criminal penalties for illegal banking and fiduciary activity contained in Section 2104(a) of the Banking Code have been significantly increased. Unlawful banking and trust activity is now a serious crime that will compel criminal enforcement authorities to pursue such cases.

This comprehensive modernization of the Banking Code is a landmark accomplishment for the banking industry in Pennsylvania, and will allow Pennsylvania state-chartered banks, as the engines of the Pennsylvania economic recovery, to conduct their business in an appropriate state regulatory climate to meet 21st century challenges.

Act 171 of 2012 - Amendments to the Department of Banking and Securities Code

The Department of Banking and Securities Code (the "DOBS Code") is the governing statute for the Department, and defines the regulatory authority of the Department over many of its regulated institutions. Originally enacted in 1933, it has undergone a few changes over the years, most recently this year with the inclusion of the regulation of state securities laws due to the merger of the Department of Banking and the Pennsylvania Securities Commission. Act 171 of 2012 has further amended the DOBS Code in four important ways regarding the regulation of financial institutions in Pennsylvania.

First, by amendments to Section 302.A(5) of the DOBS Code, the Department and regulated institutions will be freely permitted to disclose formal enforcement actions such as fines, orders and adjudications issued against institutions and institution-related individuals. The federal regulatory agencies routinely publish formal enforcement actions against institutions and institution-related individuals and allow institutions to disclose the existence of such actions. This amendment eliminates confusion surrounding the disclosure restrictions of formal orders issued by the Department and permits institutions to disclose the actions as necessary to the public as well as bank vendors, such as auditors, without requesting Department approval.

Second, amendments to Section 402 of the DOBS Code clarify that the Department has examination and enforcement authority over subsidiaries as well as affiliates of regulated institutions.

Third, amendments to Section 501 of the DOBS Code bolster the Department's enforcement authority over its regulated institutions by clarifying the ability of the Department to remove directors, officers and employees from institutions for violations of laws or orders related to the institution or for any unsafe or unsound practice or breach of fiduciary duty in conducting the business of the institution. Additionally, the amendments allow the Department to assess civil money penalties of up to \$25,000 for each violation against institutions and institution-related individuals for violations of laws or orders related to the institution or for any unsafe or unsound practice or breach of fiduciary duty in conducting the business of the institution. Pennsylvania was one of five states nationwide where the state banking regulator did not have such authority. The Department anticipates using this authority only in rare circumstances where the action of the institution or individual meets a gravity test and causes the institution to suffer a substantial financial loss, is willful, flagrant, or otherwise evidences bad faith or where previous supervisory action has been ineffective in eliminating or deterring the problem. The addition of this important regulatory authority for the Department will allow the Department to better ensure that "bad actors" are deterred/removed from the industry.

Finally, the addition of Section 506 of the DOBS Code clarifies which state and local government entities may initiate civil judicial proceedings before courts and undertake administrative investigations and enforcement actions in a manner consistent with the powers granted to the Commonwealth by Dodd Frank, and how state laws and regulations will apply to all financial institutions doing business in Pennsylvania. In summary, Section 506 of the DOBS Code:

• Authorizes the Attorney General to file lawsuits to enforce provisions of Dodd Frank, regulations adopted by the federal Consumer Financial Protection Bureau and state laws not preempted by federal law with respect to all types of financial institutions doing business in Pennsylvania at the request of, or with the approval of, the Department.

- Clarifies that state agencies, including the Attorney General, and political subdivisions, unless preempted by federal law, may initiate civil actions or administrative proceedings against financial institutions doing business in Pennsylvania with respect to matters which do not affect banking or financial activities, operations and conditions, but only after notice to and consultation with the Department. In instances in which the Department determines such civil actions or administrative proceedings may affect the banking or financial activities, operations or condition, including safety and soundness, of any regulated institution, or interfere with the regulation of such entities by the Department or other financial regulators, the Department shall have sole and exclusive jurisdiction to initiate or participate in administrative proceedings, or to request that the Attorney General initiate or participate in judicial proceedings, to enforce such laws or to determine that such proceedings are not in the public interest. This provision does not affect the ability of state or local government entities to bring criminal actions against regulated institutions.
- Provides that financial institutions and their subsidiaries doing business in Pennsylvania, including national banks and federal savings associations, are subject to state and local laws and regulations only to the same extent as such laws and regulations apply to Pennsylvania state-chartered institutions.

The primary purpose of this provision is to ensure that the Department's expertise and industry knowledge is brought to bear whenever a state or local government entity seeks to enforce a civil law against a regulated institution, and to ensure that all financial institutions doing business in the Commonwealth are subject to a uniform set of laws, regulations and standards.

Taken together, the changes to the Department's regulatory authority contained in these amendments will ensure that the Department has the tools necessary to properly regulate its banking institutions.

Act 172 of 2012 - Amendments to the Loan Interest and Protection Law

As a general matter, Section 401 of the Loan Interest and Protection Law ("LIPL") requires that all mortgage lenders provide the disclosures required by the federal Truth-in-Lending Act ("TILA"). TILA provides specific disclosures and rules regarding variable rate mortgage loans. Despite the reference to TILA in the LIPL, the LIPL also contains disclosure requirements related to variable rate mortgage loans. Act 172 of 2012 amends the LIPL to eliminate these duplicative and unnecessary disclosure requirements that are contained in Section 301(e)(7)-(11) of the LIPL. These provisions were previously preempted by the federal Alternative Mortgage Transactions Party Act of 1982; however, Dodd-Frank repealed this preemption, thereby resulting in uncertainty about whether these unnecessary and duplicative state law disclosures require mortgage lending institutions to issue two disclosures regarding variable rate mortgage loans to consumers, which would be confusing for consumers and would create an unnecessary compliance burden for mortgage lenders.

Further, Section 604 of the LIPL was amended to clarify that banks are not subject to the interest rate limitations of the LIPL, in light of the changes in the Banking Code discussed above related to lending authority.

Conclusion

The Acts represent a major milestone for Pennsylvania state-chartered institutions and will update, simplify and modernize the way Pennsylvania state-chartered institutions conduct their business. Questions regarding this new law should be addressed to the Department's Bureau of Commercial Institutions at (717) 783-8240 or by submitting an inquiry via the Department's website at www.dobs.state.pa.us.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the Acts and is therefore not inclusive of all of their provisions, conditions, exceptions, and details. Once again, it is critically important for you to read the Acts themselves and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

We at the Department look forward to working with you in order to seamlessly implement this new and important legislation.

Sincerely,

Glenn E. Moyer

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Secretary of Banking and Securities

Attachment

Attachment: Summary of Amendments to the Banking Code of 1965

Amended definition of "branch" to call a "loan production office" a "limited purpose banking office" to align with Statement of Policy at 10 Pa. Code § 13.61-68 (Section 102(h))

- The inconsistency in terms is confusing

Deleted "committee" within definition of "fiduciary" (Section 102(p))

- A "committee" was a reference to a "committee of a lunatic," a term that is now out of favor and which activity is encompassed by the term "guardian" within the existing definition

Amended definition of "incorporated institution" to include institutions organized as limited liability companies under new Section 1012 (Section 102(q))

Deleted definition of "special institution," as they no longer exist (Section 102(z.1))

Deleted duplicate definition of "subsidiary" (Section 102(bb.1))

Inserted exception to Section 105(b) for licensees under the Money Transmitter Act

Inserted reference to other legal entities in Section 106(b) and federal savings banks in Section 106(c) to clarify coverage

Deleted reference to national banks in Section 108(a) and throughout the Banking Code

- Eliminating references to national banks throughout the Banking Code is consistent with preemption principles, as the Department does not have any regulatory role over national banks and Pennsylvania will not subject national banks to any burdensome and duplicative state laws
- Eliminates confusion for national banks and consumers

Deleted reference to national banks in Section 111

Deleted reference to national banks in Section 112

Deleted Section 112.1

- Archaic and superceded by Section 115

Deleted reference to national banks in Section 113

Deleted Section 114

- Archaic because the finance charge under the Goods and Services Installment Sales Act is already deregulated

Increased fixed asset/bank premises investment authority prior approval threshold from 25% to 100% (Section 202(e))

- Puts Pennsylvania state charters on more level footing with national banks

Eliminated requirement to use "corporate seal" (Sections 205(b), 1202(f), 1205(b), 1306(b), 1504(a), 1603(f), 1609(c), 1704(a), 1802(a), 1804(a), 1806(a))

- Corporate seals are generally no longer in use

Amended Section 303 and deleted Sections 309, 310, and 316-322 to simplify bank lending provisions

- Eliminated archaic requirements and pricing restrictions on different types of loans
- Amended Section 303 uses Sections 310, 319 and 322 as basis
- Pennsylvania state-chartered banks and savings banks are no longer subject to any interest rate or fee restrictions in their lending activity

Inserted mandatory Dodd-Frank lending limit language in Section 306

- Section 611 of Dodd-Frank requires states to consider credit exposure to derivatives transactions in lending limit law if allowing banks to engage in derivatives transactions
- Used language in 12 U.S.C. § 84(b), applicable to national banks, as the basis

Clarified that savings banks with fiduciary powers are covered by Chapter 4 (Section 401)

Clarified that provisions of Section 403 apply to the activities undertaken under Section 402

Clarified deposit authority and pledging requirements in Section 403

Clarified who is covered by Section 408

- Section 408 transfers only apply if a Pennsylvania state charter is involved in the transaction
- Clarifies that Probate, Estates and Fiduciary Code is inapplicable to Section 408 transfers

Deleted Section 504(a.1), consistent with the future elimination of the Savings Association Code of 1967

Inserted "undivided profits" in Section 504(b)(vi)(B)(II) to be consistent with mutual savings bank authority in Section 504(b)(vi)(B)(I)

Deleted Sections 505 and 506; Section 506 references new Section 303 as the lending authority for savings banks and will cover personal property leases via language drawn from Section 304

Deleted Section 513 - all savings banks now have the "conditional powers"

Added a new Section 515 that clarifies pledging authority for savings banks consistent with Section 312

Added a new Section 516 that clarifies that lending limits in Section 306 apply to savings banks

Deleted reference to national banks in Section 601(a)

Amended Section 605 to permit unlimited numbers of individuals who can be beneficiaries on deposit accounts

- Consistent complaints regarding the current restriction to two beneficiaries

Cleaned up Chapter 9 to comport with Dodd-Frank de novo branching provisions

- No need for branching reciprocity determinations after Dodd-Frank

Inserted new Section 902(c) to permit inter-affiliate transactions as non-branching activity per 12 U.S.C. § 1828(r)

Changed branch closure procedure to notice instead of approval (Section 905(e))

Deleted Section 908

- Archaic provision and not needed

Clarified that principal place of business must be within Pennsylvania (Section 1004(b)(ii))

Deleted population and numbers language and clarified that initial minimum capital is also ongoing minimum capital (Sections 1010(b)(i) and 1102(b))

Added a new Section 1012 that potentially allows institutions to be organized as LLCs if the Limited Liability Company Law is amended to allow it, which the Department expects next year

Amended Section 1302(a) to permit "accumulated net earnings" to include earnings transferred to surplus as a result of a merger if used within seven years of the merger

Amended Section 1403 to provide new prohibitions regarding who cannot be a director of an institution and to allow the Auditor General to remain on an institution's board if currently serving as a director when elected to office

Inserted "savings banks" into Section 1407(a), and deleted "if required by department"

Deleted Section 1413(a)(ii) to align with Reg O (conforming change to Section 2101(a)(ii))

- Eliminates confusion

Deleted Section 1417, as "special institutions" no longer exist

Added a new Section 1418 referencing standard of care for directors and officers contained in Section 512 of the BCL

Deleted reference to national banks in Section 1601

Amended Section 1602(a) to permit mergers of trust companies into bank and trust companies and national banks and federal savings banks with trust powers; and mergers of non-bank subsidiaries into institutions provided that the institution can engage in such activity as principal

Deleted inapplicable references to "associations" in Section 1609 consistent with the anticipated repeal of the Savings Association Code of 1967

Inserted new Section 1609(a)(ix) to provide clear authority for a credit union to convert to a mutual savings bank

Inserted new Section 1609(a)(x) to provide authority for banks and savings banks to directly convert to each form

Deleted reference to national banks in Section 1610(g)

Amended Section 1701 to permit national trust bank with no deposits to convert to a trust company

Eliminated most of Chapter 20 for purposes of deferring to the DOBS Code for Department regulatory authority

- The DOBS Code is the Department's authorizing statute and should govern the Department; having duplicative and conflicting provisions in the Banking Code is confusing

Deleted references to Section 2004(a) in Sections 2102 and 2104, consistent with eliminating Chapter 20

Increased penalties for violations of Sections 105 and 106 (Section 2104(a))

- Unlawful banking and trust activity is now a serious crime that would compel criminal enforcement authorities to take the case